

(e) In actions not based on an indictment, if the D&S Committee finds that the contractor's submission in opposition to the suspension raises a genuine dispute over facts material to the suspension, the D&S Committee shall submit to the suspending official the information establishing the dispute of material facts. However, the D&S Committee must first coordinate any further proceeding regarding the facts in dispute with the Department of Justice or with a State prosecuting authority in a case involving a State jurisdiction. VA will take no further action to determine disputed material facts pursuant to this section or 809.470 if the Department of Justice or a State prosecuting authority advises VA that additional proceedings to make such a determination would prejudice Federal or State legal proceedings.

(f) If the suspending official agrees that there is a genuine dispute of material facts, the suspending official shall refer the dispute to the designee for resolution pursuant to 809.470.

#### **809.470 Fact-finding procedures.**

The provisions of this section constitute the procedures to be used to resolve genuine disputes of fact pursuant to 809.406-3 and 809.407-3 of this chapter. The DSPE shall appoint a designee to conduct the fact-finding. OGC shall represent VA at any fact-finding hearing and may present witnesses for VA and question any witnesses presented by the contractor. The hearings shall be conducted in Washington, DC. The proceedings before the fact-finder will be limited to a finding of the facts in dispute, as determined by the debarring or suspending official. The fact-finder will establish the date for the fact-finding hearing, normally to be held within 45 working days of the submission of the dispute.

(a) The Government's representative and the contractor will have an opportunity to present evidence relevant to the facts at issue. The contractor may appear in person or through a representative at the fact-finding hearing. The contractor may submit documentary evidence, present witnesses, and confront any person the agency presents.

(b) Witnesses may testify in person. Witnesses will be reminded of the official nature of the proceedings and that any false testimony given is subject to criminal prosecution. Witnesses are subject to cross-examination. Hearsay evidence may be presented and will be given appropriate weight by the fact-finder.

(c) The proceedings shall be transcribed and a copy of the transcript shall be made available at cost to the contractor upon request, unless the contractor and the fact-finder, by mutual agreement, waive the requirement for a transcript.

(d) The fact-finder shall determine the disputed fact(s) by a preponderance of the evidence. As required by FAR 9.406-3(d)(2)(i) and 9.407-3(d)(2)(i), written findings of fact shall be prepared by the fact-finder. A copy of the findings of fact shall be provided to the debarring or suspending official, the Government's representative, and the contractor.

### **Subpart 809.5—Organizational and Consultant Conflicts of Interest**

#### **809.503 Waiver.**

The HCA is delegated authority to waive any general rule or procedure of FAR Subpart 9.5. As provided at FAR 9.503, this authority may not be redelegated.

#### **809.504 Contracting officer responsibilities.**

(a) A contracting officer must determine whether awarding a contract will result in an actual or potential conflict of interest for the contractor.

(1) The contracting officer will make a conflict of interest determination after reviewing information submitted by offerors, evaluating information gathered under FAR 9.506, and exercising his or her own judgment.

(2) In evaluating possible organizational conflicts of interest, the contracting officer may obtain the advice of legal counsel and the assistance of technical specialists.

(b) If the contracting officer determines that there is no way to avoid or mitigate an organizational conflict of interest arising from a contract award,

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the contracting officer may disqualify the offeror from award under FAR 9.504(e).

(c) Even if awarding a contract will result in an organizational conflict of interest, the contracting officer may request a waiver from his or her HCA if awarding the contract is in the best interests of the Government.

(1) Before granting a waiver request under this paragraph, the HCA must obtain the concurrence of OGC.

(2) If the HCA grants a waiver request, the contracting officer may set contract terms and conditions to reduce any organizational conflict of interest to the greatest extent possible.

(d) In any solicitation for the services addressed at FAR 9.502, the contracting officer must require that each offeror submits a statement with its offer disclosing all facts relevant to an existing or potential organizational conflict of interest involving the contractor or any subcontractor during the life of the contract (see 809.507-1(b) and 852.209-70).

### **809.507 Solicitation provisions and contract clause.**

#### **809.507-1 Solicitation provisions.**

(a) While conflicts of interest may not presently exist, award of certain types of contracts may create potential future organizational conflicts of interest (see FAR 9.508 for examples). If a solicitation may create a potential future organizational conflict of interest, the contracting officer shall insert a provision in the solicitation imposing an appropriate restraint on the contractor's eligibility for award of contracts in the future. Under FAR 9.507-1, the restraint must be appropriate to the nature of the conflict and may exclude the contractor from award of one or more contracts in the future.

(b) The clause at 852.209-70, Organizational conflicts of interest, must be included in any solicitation for the services addressed in FAR 9.502.

## **PART 810—MARKET RESEARCH**

Sec.

810.001 Market research policy.

810.002 Market research procedures.

AUTHORITY: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c) and (d); and 48 CFR 1.301-1.304.

SOURCE: 74 FR 64630, Dec. 8, 2009, unless otherwise noted.

### **810.001 Market research policy.**

When conducting market research, VA contracting teams shall use the VIP database, at <http://www.VetBiz.gov>, in addition to other sources of information.

### **810.002 Market research procedures.**

Contracting officers shall record VIP queries in the solicitation file by printing the results of the search(s) along with specific query used to generate the search(s).

## **PART 811—DESCRIBING AGENCY NEEDS**

### **Subpart 811.0—Definitions**

Sec.

811.001 Definitions.

### **Subpart 811.1—Selecting and Developing Requirements Documents**

811.103 Market acceptance.

811.103-70 Technical industry standards.

811.104 Use of brand name or equal purchase descriptions.

811.104-70 Brand name or equal purchase descriptions.

811.104-71 Purchase description clauses.

811.104-72 Limited application of brand name or equal.

811.104-73 Bid samples.

811.104-74 Bid evaluation and award.

811.104-75 Procedure for negotiated procurements.

811.105 Items peculiar to one manufacturer.

811.107 Contract clauses.

### **Subpart 811.2—Using and Maintaining Requirements Documents**

811.202 Maintenance of standardization documents.

811.204 Contract clause.

### **Subpart 811.4—Delivery or Performance Schedules**

811.404 Contract clause.

### **Subpart 811.5—Liquidated Damages**

811.501 Policy.

811.503 Contract clause.